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No. 1140

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1967

Jerry D. Chaney,

Petitioner,

vs.

The State Bar of California, et al

Petition for Rehearing of Order Denying Certiorari And Application to Suspend the Order of Denial of Certiorari

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Appearing in Propria Persona

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INTRODUCTION

Jerry D. Chaney, your petitioner, respectfully requests that this court grant rehearing of its order dated April 8, 1968, which denied certiorari, and that the court now grant certiorari.

REASONS FOR GRANTING PETITION

Petitioner requests rehearing of his petition for writ of certiorari for the following reasons:

1. After petitioner had filed his original petition for writ of certiorari and prior to this court's denial of same, the respondents, in their brief in opposition to granting certiorari, made misleading statements of fact which may have influenced the court's decision.

2. Petitioner, in his original petition for writ of certiorari, inadvertently failed to raise one question which he should have raised, although he did raise it in his complaint to the district court (Record, page 3).

I

MISLEADING STATEMENTS

A. On page 5 of respondents' brief in opposition to granting certiorari, respondents allege that it was the clerk of the California Supreme Court who rejected petitioner's Ex Parte Motion for admittance to the practice of law.

Respondents failed to mention that the clerk acted "at the request of the court" in returning petitioner's motion to him unfiled (See Exhibit B in petition for writ of certiorari).

The action of the court in directing the clerk to return the motion (which, incidentally, did not name a respondent and was not intended as a petition under Rule 59 (b) of Rules of Procedure and Practice of the California Supreme Court) had all the force and effect of a denial of the motion. It ended the matter. It proved what petitioner has contended: that he cannot gain admittance any other way than through certification to the California Supreme Court by the State Bar. There is no other means. Petitioner has been effectively blocked in his attempt to pursue the occupation for which he studied for six years at great personal expense and sacrifice of other opportunities. Because of respondents' failure to certify him, petitioner, in fact, lost his job as a law clerk in a leading law firm in the community where he lived, was

forced to move to another city to find other work, and is no longer associated with the practice of law in any manner.

Respondents make the point that petitioner could have sought his remedy under Rule 59 (b) (Respondents' Brief in Opposition, page 5-6). Petitioner agrees. But petitioner was not precluded from electing to seek the federal remedy, which is a separate remedy, independent of the state remedy, according to the explicit holdings of this court (Record, page 46). Petitioner sought the federal remedy because it was designed specially by the United States Congress to protect the private individual from infringement on his constitutional rights by a person or persons acting under color of law.

For this court to sustain respondents' claim that petitioner suffered no deprivation under 42 USC, Section 1983 (Civil Rights Act) is to (1) frustrate the intent of the United States

Congress; (2) ignore reality; (3) ignore holdings of this court in related cases; and (4) discriminately bar this petitioner from obtaining justice.

B. On page 7-8 of respondents' brief in opposition, the respondents prejudically implied that petitioner is attempting to abolish all requirements for qualification to practice law. Nothing can be further from the truth. What he is attempting to do is establish an ascertainable standard.

C. On page 9-10 of respondents' brief in opposition, it is said that petitioner claims an essay type examination is not a rational method of testing proficiency of law. This is an outright twisting of petitioner's contention. He has never argued that the essay test is not rational. In fact, he has agreed that the essay test is rational (see page ii of Appendix II, Petitioner's petition for writ of certiorari).

However, he does not agree that simply because the test is rational (meaning sensible,

according to Webster's Collegiate Dictionary), it is necessarily constitutional. If constitutionality depended solely on rationality, we would be led to even more absurd results than have already been reached. For instance, if Congress decided there was a need to regulate population growth, a rational way of doing it would be to require sterilization of all children after the second child in each family. It would be sensible, in that the plan would definitely tend to accomplish what the Congress wanted. But would it be constitutional? Petitioner, with some trepidation after hearing some of the argument in the instant case -- hopes not.

D. Respondents further claim on page 10 of their brief in opposition that "most lawyers would concede the superiority of essay type examinations in testing proficiency at the law." Petitioner is a lawyer and he does not concede; nor has a number of other attorneys who he has talked to; nor do the psychologists of this state, who are much more intimately qualified to speak on the merits of one

testing method over another. But whether essay tests are or are not superior is a matter of no significance. Required sterilization undoubtedly would be superior to voluntary birth control. But forced sterilization of children merely because of the order of their birth would be unconstitutional, and so is arbitrary grading -- no matter how superior -- when dealing with a constitutional right.

II

ADDITIONAL QUESTION

Petitioner inadvertently failed to raise the following important question in his original petition for writ of certiorari:

> Whether the State Bar of California, in the giving of an examination to determine if an applicant meets minimum qualifications to practice law, can ask questions which are so vague or capricious that they defy answering with any degree of certainty?

As petitioner contended in his complaint to the district court (Record, page 3), "each of the said examinations (he took) was vague, indefinite, arbitrary and capricious." Indeed, the questions were, for the most part, so vague and indefinite that one could have reasonably discussed an entire field of law in order to fully answer the questions.

To illustrate: Question No. 15 in the March 2, 1966, examination (which petitioner took) stated a series of financial dealings of husband and wife and then said, "Discuss sources to which the judgment creditor may look for satisfaction, and defensive measures and contentions available to H & W. Answer according to California law."

This question opened the door to almost unlimited discussion. A judgment creditor may look to any source he wants, although some of them might not produce anything for him. Does the question call for a discussion of likely sources, or does it call for a complete discussion of all community property laws? The same question could be asked about the

Congress; (2) ignore reality; (3) ignore holdings of this court in related cases; and (4) discriminately bar this petitioner from obtaining justice.

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defensive measures and contentions. Was the examinee expected to discuss all possible defensive measures and contentions? Or was he supposed to discuss only those likely to be considered valid by the court? One does not know. The examinees had to guess at what the grader wanted and try to cover as much as they could in the alloted time of 55 minutes. Such a shot-in-the-dark type of question can hardly be called "fair."

The end result of so vague an examination is that the grader is not required to look for specific answers to specific questions, but may look over the answer generally, pick the ones that happen to satisfy him, and fail the rest, at his whim.

As a final point, respondents say it cannot be contended that grading was unfair simply because some examinees were failed (Respondents' brief in opposition, page 12.) Conversely, neither can it be contended that a showing of honesty on its face is made when some examinees were passed. It is self-evident that, in an examination as equivocal

as this type, the grader is in a position to fail any examinee he wishes to fail, or to fail as many examinees as he wishes to fail; or he can pass anyone or any number that he wishes to pass, for whatever reason he may have. He (the grader) is in complete control of the outcome.

CONCLUSION

In view of the many thousands of potential bar examinees who would be affected by the decision in this case, as well as the countless millions who would be affected by an answer to Question No. 2 in petitioner's petition for writ of certiorari, petitioner urges this court to grant certiorari, so that a full and complete hearing can be had. Petitioner makes this plea in the earnest belief that the essence of democracy and government of law is at stake.

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Appearing in Propria Personna

CERTIFICATE OF GOOD FAITH

Pursuant to Rule 58, I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay, and is restricted to the grounds specified in paragraph 2.

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APPLICATION TO SUSPEND THE ORDER

OF DENIAL OF CERTIORARI

Petitioner in the herein entitled action hereby requests the court to direct an order to the United States Court of Appeals for the Ninth Circuit, suspending denial of the petition for writ of certiorari dated April 8, 1968, in the herein entitled action, pending outcome of the petition for rehearing.

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Dated